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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 09/837,094 | 04/18/2001 | James M. Sheppard JR. | 3129 | 8428 |

7590 12/16/2005

DOUGHERTY, CLEMENTS & HOFER
GREGORY N. CLEMENTS
1901 ROXBOROUGH ROAD
CHARLOTTE, NC 28211

EXAMINER

BEFUMO, JENNA LEIGH

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1771

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/837,094

Applicant(s)

SHEPPARD, JAMES M.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21,22 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21,22 and 24-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on September 20, 2005, has been entered. Claims 1 – 20 and 23 have been cancelled. Claim 21 has been amended. Claims 21, 22, and 24 – 27 are pending.
2. The cancellation of claim 23 renders moot the rejections to that claim in the previous Office Action.

Double Patenting

3. Claims 21 – 27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21 – 36 of copending Application No. 09/747,529. Although the conflicting claims are not identical, they are not patentably distinct from each other because the jacquard loom recited in 09/747,529 and the dobby loom recited in this application can be used to produce the same simple fabric construction.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 21, 22, and 24 – 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stark (3,669,818) in view of Parker et al. (1,925,459) and Sherrill et al.

Claim 21 has been amended to include the limitation that the border is capable of masking the graphic impression that may overlap in the boarder area. However, this limitation is

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not given patentable weight with respect to the claimed product because it does not require that the graphic impression overlaps with the border. Since the prior art teaches that the printing can be applied in register with the woven design the different regions would not need to mask the graphic impression. Additionally, the limitation reciting that the central area on the back of the woven fabric is capable of masking any potential bleed through is also not given patentable weight since it does not require the printing to bleed through the towel. Hence, any color border or central are on the back of the towel would mask printing that doesn't exist.

Further, it is noted that the applicant is trying to claim combination of the woven structure and print pattern, to give the design choice some functional feature. However, this is not considered to be persuasive, since the color choices used to produce a patterned product are a result of design choice. One with ordinary skill in the art would be able to choose color choices based on the desired appearance of the end product. The new limitations are considered to be design limitations which do not add to the structural features of the claimed product.

Finally, with regards to the arguments related to the design features of the towel and how much patentable weight they deserve, the Examiner maintains the arguments set forth in the previous Office Actions, and for simplicity is not going to repeat them here. The location of the printed pattern and the specific weave pattern are design features which will not be given patentable weight since they are not functionally related to the towel structure or how it is used, but instead only describes the appearance of the towel. Thus, the rejections are maintained.

Conclusion

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6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

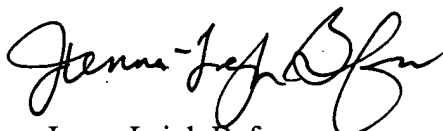
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Jenna-Leigh Befumo', with a stylized flourish at the end.

Jenna-Leigh Befumo
December 9, 2005